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**MAR 14 2007**

**OFFICE OF PETITIONS**

In re Application of :  
Lamphere et al. : DECISION ON APPLICATION  
Application No. 09/994,342 : FOR PATENT TERM ADJUSTMENT  
Filed: November 26, 2001 :  
Atty. Dkt. No: 13DV13913 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)" filed September 12, 2006. Applicants request that the patent term adjustment at the time of the mailing of the Notice of Allowance be corrected.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby Granted.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is FOUR HUNDRED SEVENTY-SIX (476) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On August 30, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 90 days. The instant application for patent term adjustment was timely filed. Applicants dispute the reduction of 362 days of PTA for applicant delay in allowing the application to go abandoned for failure to respond to the Office Action mailed on September 25, 2003. Applicants state that the application was improperly held abandoned.

The record supports a conclusion that the application was improperly held abandoned. A timely petition to withdraw the holding of abandonment was filed on May 18, 2004. The petition was granted and the holding of abandonment was withdrawn on September 21, 2004. An Office action restarting the time period for reply was mailed on October 13, 2004. Applicants timely responded to the Office action on December 21, 2004 within the meaning of 37 CFR 1.704(b). Accordingly, no reduction is warranted. It is further noted that the petition was filed within two months of the mailing of the Notice of Abandonment. Thus, no reduction is warranted pursuant to 37 CFR 1.704(c)(3).

Applicants' further dispute the reduction of 24 days in connection with the Information Disclosure Statement (IDS) submitted January 14, 2005.

Applicants argue that the IDS should not be considered a failure to engage in reasonable efforts to conclude prosecution for at least 30 days after issuance of the Japanese Office Action. Applicants conclude that the IDS should only have resulted in a 0 day reduction rather than 24 days.

The submission of the IDS on January 14, 2005 is deemed a supplemental reply within the meaning of 37 CFR 1.704(c)(8). Accordingly, the reduction began December 22, 2004, the day after the date the reply to the non-final Office action was filed, and ended January 14, 2005, the date that the supplemental reply (IDS) was filed.

The IDS submitted January 14, 2005 does not comply with the requirements of 37 CFR 1.704(d). However, on instant application for patent term adjustment, applicants have made the 1.704(d) statement. In view thereof, the reduction of 24 days is being removed

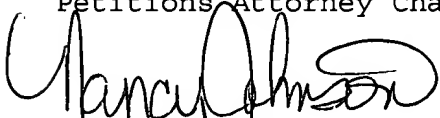
In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is FOUR HUNDRED SEVENTY-SIX (476) days..

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema R. Grant at (571) 272-3215.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

enc: PAIR screen for U.S. Application No. 09/994,342

Day : Monday  
Date : 3/12/2007

# PALM INTRANET

Time : 17:04:19

PTA Calculations for Application: 09/994342			
Application Filing Date:	11/26/2001	PTO Delay (PTO):	476
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	386
Post-Issue Petitions:	0	Total PTA (days):	476
PTO Delay Adjustment:	386		

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57	05/26/2006	MAIL BPAI DECISION ON APPEAL - REVERSED	278		45
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54	02/28/2006	DOCKETING NOTICE MAILED TO APPELLANT			
53	02/28/2006	ASSIGNMENT OF APPEAL NUMBER			
52	01/27/2006	APPEAL AWAITING BPAI DOCKETING			
51	11/04/2005	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
50	10/31/2005	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
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42	07/19/2005	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
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37	01/28/2005	MAIL NON-FINAL REJECTION			
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30	10/08/2004	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
29	10/12/2004	MAIL NOTICE OF RESCINDED ABANDONMENT			
28	10/08/2004	NOTICE OF RESCINDED ABANDONMENT IN TCS			
27	09/21/2004	PETITION TO REVIVE APPLICATION - GRANTED			
26	05/18/2004	PETITION ENTERED			
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24	05/14/2004	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
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15	01/28/2003	CASE DOCKETED TO EXAMINER IN GAU			
14	01/28/2003	CASE DOCKETED TO EXAMINER IN GAU			
13	05/15/2002	APPLICANT RESPONSE RECEIVED			
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12	04/30/2002	REGARDING POTENTIAL NASA INTEREST (45-DAY LETTER) MAILED			
11	04/03/2002	RECEIPT OF ACKNOWLEDGMENT LETTER			
9	12/17/2001	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
8	02/07/2002	CASE DOCKETED TO EXAMINER IN GAU			
7	12/28/2001	APPLICATION DISPATCHED FROM OIPE			
6	12/27/2001	APPLICATION IS NOW COMPLETE			
5	12/17/2001	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
4	12/17/2001	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
3	12/13/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	12/04/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	11/26/2001	INITIAL EXAM TEAM NN			

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### EXPLANATION OF PTA CALCULATION

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